

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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**UNITED STATES OF AMERICA,**

Case No. 2:06-CR-99 JCM (RJJ)

**Plaintiff(s),**

## ORDER

v.

MICHAEL NEWMAN.

Defendant(s).

Presently before the court is the matter of *United States of America v. Newman*, case number 2:06-cr-00099-JCM-RJJ.

The Ninth Circuit has remanded the instant case for the limited purpose of allowing the district court to consider the following issue:

[W]hether appellant's conviction under 18 U.S.C. § 924(c) must be vacated because armed robbery does not qualify as a predicate crime of violence under either the elements/force clause or residual clause of § 924(c)(3).

(ECF No. 60 at 1).

The district court answers this issue in the negative. Appellant's conviction under § 924(c) is proper because armed robbery qualifies as a predicate crime of violence under both the elements/force clause and the residual clause of § 924(c)(3). Title 18 U.S.C. § 924(c)(3) provides as follows:

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

In the plea memorandum, appellant stipulated that the essential elements for the crime of armed bank robbery in violation of 18 U.S.C. § 2113(a) and (d) are as follows:

1. The defendant took money belonging to a financial institution;
  2. The defendant used force, violence, or intimidation in doing so;
  3. The deposits of the financial institution were then insured by the Federal Deposit Insurance Corporation (FDIC); and
  4. The defendant intentionally made a display of force that would cause reasonable fear of bodily harm by using a firearm.

(ECF No. 42 at 8). Appellant further stipulated that the essential elements for the crime of brandishing a firearm in a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii) are as follows:

1. The defendant committed the crimes [*sic*] of Armed Bank Robbery as charged in count one of the Indictment;
  2. The defendant knowingly used and brandished the firearm; and
  3. The defendant brandished the firearm in [*sic*] during and in relation to crimes of violence.

<sup>1</sup> (ECF No. 42 at 9).

In light of the stipulated elements set forth in the plea memorandum and the definition of “crime of violence” set forth in § 924(c)(3), the court finds that appellant’s conviction under § 924(c) is proper because armed robbery qualifies as a predicate crime of violence under both the elements/force clause and the residual clause of § 924(c)(3).

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<sup>1</sup> The plea agreement also provides the following:

Defendant understands that by pleading guilty to Count Two of the Criminal Indictment, which charges him with Brandishing a Firearm in a Crime of Violence, in violation of Title 18, United States Code, Section 924(c)(1)(A)(ii), he will serve a mandatory sentence of eighty four (84) months imprisonment consecutive to any term of imprisonment imposed pursuant to the above-referenced guideline calculations.

(ECF No. 42 at 3).

Accordingly,

IT IS HEREBY ORDERED that the court answers the Ninth Circuit's remanded issue in the negative, consistent with the foregoing.

DATED June 1, 2017.

Xem C. Mahan  
UNITED STATES DISTRICT JUDGE